

1. S.B.CIVIL WRIT PETITION NO. 2834/2001

M/s Sandeep Motor Driving School Vs. State of Rajasthan & Ors.

2. S.B.CIVIL WRIT PETITION NO. 6996/2005

M/s Sandeep Motor Driving School Vs. State of Rajasthan & Ors.

DATE OF ORDER :: 12.7.2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Vinay Jain, for the petitioner.

Mr. B.L. Tiwari, Dy. Govt. Advocate.

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The petitioner, a Motor Driving School, by these petitions for writ is challenging demand of tax made by the assessing officer under the Rajasthan Motor Vehicles Taxation Act, 1951 (hereinafter to be referred to as, 'the Act of 1951'). The petitioner is claiming exception as per Rule 28 of the Rajasthan Motor Vehicles Taxation Rules, 1951 (hereinafter to be referred to as, 'the Rules of 1951') on the count that the motor vehicles subjected to tax are used by the petitioner solely for the purpose of an educational institution recognised by the Government of Rajasthan.

Heard counsel for the parties.

Rule 28 of the Rules of 1951 provides complete exemption from payment of tax to certain motor vehicles including the motor vehicles

owned by and used solely for the purpose of any educational institution which is recognised by the Government or whose managing committee is a society registered under the Societies Registration Act, 1860 of the Central Legislation as adopted to Rajasthan.

The submission of learned counsel for the petitioner is that the petitioner a Motor Driving School is a recognised educational institution, therefore, the vehicles owned by it used solely for the purpose of the institution are exempted from all taxes sought to be imposed under the Act of 1951. To substantiate the contention that the petitioner institution is recognised by the Government of Rajasthan reliance is placed upon the licence given by the Regional Transport Officer, Jodhpur to the petitioner institution for establishing a motor driving school.

The term 'recognised institution' is nowhere defined in the Act of 1951 or under the Rules framed thereunder. The term is also not defined under the Motor Vehicles Act, 1988 or the Rules framed thereunder. The grant of licence by the Regional Transport Authority may that be a permission to run a motor driving school as provided under Motor Vehicles Act, 1988 but it also does not mean that any recognition is given to the petitioner as an educational institution.

In the State of Rajasthan educational institutions receive recognition under the Non-government Educational Institutions Act, 1989 and the petitioner institution is not having any recognition under that Act, as such, the petitioner cannot be treated as an educational institution under the Act of 1989. Thus, I am of the view that the petitioner is not an educational institution recognised by the Government of Rajasthan.

Beside the above the intention of the Legislature for granting complete exemption to certain categories of motor vehicles is relating to the motor vehicles those are providing service to public at large. Rule 28 of the Rules of 1951 prescribes exemption from payment of tax to the motor vehicles owned by local authority in Rajasthan which are used solely for road cleaning, road watering or conservancy purpose. The motor-vehicles used as fire-brigade or ambulance purposes or for conveyance of corpses are also exempted from payment of taxes.

The motor vehicles owned by the local authorities but are not used for road cleaning, road watering or conservancy purpose or for fire-brigade or ambulance purposes are not having any exemption under the Rules of 1951. Whereas even the private vehicles used in Rajasthan as fire brigade, ambulance or for conveyance of corpses are having

exemption from payment of tax. Thus, the intention of Legislature for grant of exemption from payment of tax is to the motor-vehicles which are involved in public service.

No exemption is given to the vehicles, may those be owned by local bodies or educational institutions, if, those are not involved in public service like cleaning, watering or for educational purpose etc. The vehicles, even if, those are owned by private persons but used for public service are having exemption from the tax. This interpretation is also fortified by the term 'educational institution bus' as defined under Section 2(11) of the Motor Vehicles Act, 1989, that mean omnibus which is owned by a college, school or other education institution and used solely for the purpose of transporting the students or staff of the educational institution in connection with any of its activities, accordingly, what it appears is that the vehicles used for the purpose of educational institutions means those vehicles which are used to transport students or those which are used for the purpose of service have exemption. The use of motor vehicle by a motor driving school is not a service but a commercial activity and use of the vehicle is as an equipment for commercial purpose and such a vehicle, therefore, can not be treated to be exempted from tax under the Act of 1951 as prescribed under Rule 28 of the Rules of 1951.

For the reasons given above I do not find any substance in these petitions for writ, and therefore, the same are dismissed.

(GOVIND MATHUR), J .

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